

CAUSE NUMBER PD-0585-21

IN THE COURT OF CRIMINAL APPEALS OF TEXAS
AUSTIN, TEXAS

FILED
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
DEANA WILLIAMSON, CLERK

DANIELLE LEIGH EDWARDS,
Appellant
vs.
THE STATE OF TEXAS,
Appellee

On Discretionary Review from Cause Number 03-20-00138-CR
In the Third Court of Appeals in Austin, Texas

Appealed from Cause Number 18-217
In the 421st Judicial District Court of Caldwell County, Texas

STATE'S BRIEF ON THE MERITS

Fred Weber
Criminal District Attorney
Caldwell County, Texas

By:
Chase G. Goetz
Ass't Criminal District Attorney
1703 S. Colorado Street, Box 5
Lockhart, Texas 78644
Telephone: (512) 398-1811
Facsimile: (512) 398-1814
State Bar No. 24106009
ATTORNEY FOR THE STATE

IDENTITY OF PARTIES AND COUNCIL

Appellant:

Danielle Edwards

Trial Counsel for Appellant:

John Butler

The Law Office of John
Butler

P.O. Box 40067

Austin, Texas 78704

Tel: (512) 472-3887

Fax: (512) 233-1787

SBN: 03526150

Appellate Counsel for Appellant

Susan Schoon

Schoon Law Firm, P.C.

208 S. Castell Ave., Ste. 201

New Braunfels, Texas 78130

Tel: (830) 627-0044

Fax: (830) 620-5657

SBN: 24046803

Appellee:

The State of Texas

Trial Counsel for the State

Cassandra Benoist

Ass't Crim. Dist. Attorney

Caldwell County

1703 S. Colorado St., Box 5

Lockhart, Texas 78644

Tel: (512) 398-1811

Fax: (512) 398-1814

SBN: 24069371

Trial Counsel for the State

Barbara Rowan

Ass't Crim. Dist. Attorney

Caldwell County

1703 S. Colorado St., Box 5

Lockhart, Texas 78644

Tel: (512) 398-1811

Fax: (512) 398-1814

SBN: 24037401

Appellate Counsel for the State

Chase G. Goetz

Ass't Crim. Dist. Attorney

Caldwell County

1703 S. Colorado St., Box 5

Lockhart, Texas 78644

Tel: (512) 398-1811

Fax: (512) 398-1814

SBN: 24106009

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**IN THE COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS**

DANIELLE LEIGH EDWARDS,	§	
Appellant	§	
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vs.	§	NO. PD-0585-21
	§	
THE STATE OF TEXAS,	§	
Appellee	§	

**On Discretionary Review from Cause Number 03-20-00138-CR
In the Third Court of Appeals in Austin, Texas**

**On Appeal from Cause Number 18-217
In the 421st Judicial District Court of Caldwell County, Texas,
Honorable F.C. ‘Chris’ Schneider, Presiding**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

STATEMENT REGARDING ORAL ARGUMENT

Oral argument was not ordered by the Court.

ISSUES PRESENTED

**ISSUE 1: IS THE EVIDENCE PRESENTED AT TRIAL LEGALLY
SUFFICIENT TO SUPPORT APPELLANT’S CONVICTION FOR
INJURY TO A CHILD?**

STATEMENT OF FACTS

During the summer of 2018, Child Protective Services (CPS) of the
Department of Family and Protective Services (DFPS) maintained an

open investigation into Appellant for allegations of child abuse against her daughter, L.B.¹ 3 Rep. R. at 18:14–19:18. L.B., approximately one-year old during summer 2018, was cared for by her mother, Appellant, and her father, Morris Branton. *See* 3 Rep. R. at 35:24–36:4. Applicant was L.B.’s primary caregiver,² and responsible for feeding L.B., either through breastfeeding or solid foods. 3 Rep. R. at 37:4–37:25.

Investigator Christy Timmons had been assigned to investigate allegations of child abuse and, as part of her investigation, requested a hair follicle test on L.B. in response to Appellant’s acknowledgement that she had been using illegal drugs. 3 Rep. R. at 19:12–19:23; 6 Rep. R. at St. Ex. 2 (Appellant’s acknowledging her use of cocaine during June 2018). L.B.’s hair follicle test returned positive for cocaine, in an amount greater than 20,000 picograms per milligram. 6 Rep. R. at St. Ex. 1. Timmons removed L.B. from Appellant’s and Branton’s home, and placed her with Jane Davis. 3 Rep. R. 24:14–24:21, 36:16–36:25; 4 Rep. R. at 32:10–32:12.

¹ An alias is used to protect the identity of the minor victim, pursuant to Tex. R. App. Proc. 9.10(a)(3).

² Another person lived with this family, but there is no evidence that this person breastfed L.B., or contributed to L.B.’s ingestion of cocaine. 3 Rep. R. at 40:21–41:2.

Davis observed L.B. to be small for her age, and overly clingy and fussy. 4 Rep. R. at 34:2–34:19. L.B. was evaluated for developmental issues, but none were diagnosed. 4 Rep. R. at 34:20–34:25. Since the evaluation, no other developmental issues had been observed by Davis at the time of trial. *Id.*

The Caldwell County Grand Jury indicted Appellant for Injury to a Child, a second-degree felony. Clerk R. at 12. The State alleged reckless conduct resulting in serious mental deficiency, impairment or injury to L.B. *Id.* Appellant elected a jury trial and announced her not guilty plea. 2 Rep. R. at 12:12–12:16.

During trial, Branton testified that Appellant was L.B.’s primary caretaker. 3 Rep. R. at 37:4–37:13. He also testified that he had not done drugs in 60 years and had never done cocaine. 3 Rep. R. at 38:8–38:12. Further, he testified that he never gave L.B. cocaine, and never exposed her to cocaine. 3 Rep. R. at 38:19–38:22.

In addition to other witnesses, the State called Bruce Jefferies to interpret L.B.’s hair follicle test results. Jefferies testified that, based on the results and the presence of benzoylecgonine and norcocaine (cocaine

metabolites), L.B. had ingested cocaine. 4 Rep. R. at 16:22–17:12. He testified that the concentration of cocaine within L.B. were consistent with chronic, adult cocaine use. 4 Rep. R. at 22:22–22:25. This level of use would cause withdrawals and seizures. *Id.* It could also cause mental developmental delays in a child. 4 Rep. R. at 23:21–24:4. Jefferies testified to the effects of cocaine on a person, which included “loss of appetite, psychological effects, your heart racing. You don’t eat as much because it’s a stimulant. It’s attacking your central nervous system, but the real possibility is an overdose and death on anybody[.]” 4 Rep. R. at 21:10–21:14.

After testimony from Davis that she observed L.B. to be small, overly clingy and fussy, and that no diagnosis of mental development issues had been made, the State rested. 4 Rep. R. at 34:2–35:13. Applicant rested without presenting its case-in-chief. 4 Rep. R. at 38:18–38:13. The jury convicted Appellant of Injury to a Child as alleged in the indictment, and the trial court sentenced her to twelve years’ confinement in the Texas Department of Criminal Justice—Institutional Division. Clerk’s R. at 163.

SUMMARY OF THE ARGUMENT

Solely at issue is whether the evidence presented at Appellant's trial was legally sufficient to support the jury's finding that Appellant committed injury to a child resulting in serious mental deficiency, impairment, or injury. Applicant does not challenge the Third Court of Appeals' plain and ordinary meaning of serious mental impairment, deficiency, or injury.

The evidence presented to the jury included testimony that the injured one-year-old child ingested high amounts of cocaine commonly associated with adult chronic cocaine abuse, that the child would suffer substance abuse withdrawals, that long-term mental consequences were possible, and that the child was overly clingy and fussy. This evidence, when viewed in the light most favorable to its verdict, supported the jury's determination that Appellant committed injury to a child. Because the jury considered sufficient evidence to find Appellant guilty of all elements of the charged offense beyond a reasonable doubt, no error occurred.

Absent error, the State requests that this Honorable Court deny all relief to Appellant and affirm the judgment of the Third Court of Appeals.

ARGUMENT AND AUTHORITIES

ISSUE 1: IS THE EVIDENCE PRESENTED AT TRIAL LEGALLY SUFFICIENT TO SUPPORT APPELLANT’S CONVICTION FOR INJURY TO A CHILD?

A. *The Third Court of Appeals accurately set out a plain and ordinary meaning of serious mental deficiency, impairment, or injury, which is not contested by Appellant on discretionary review.*

The Third Court of Appeals accurately explained the plain and ordinary meaning of “serious mental deficiency, impairment, or injury”. Statutory interpretation is a question of law and is reviewed de novo. *Chambers v. State*, 580 S.W.3d 149, 156–57 (Tex. Crim. App. 2019). In instances where prohibited conduct is ambiguous or undefined, a sufficiency evaluation may require an appellate court to determine the meaning of a statutory term or phrase. *Id.* at 156. Otherwise, the court may not be able to determine whether a defendant’s conduct actually constituted an offense. *Id.* Once the criminal term is defined, the court is better able to review the record to determine whether presented evidence is sufficient to establish the element at issue. *Id.* Ambiguity exists when statutory language “may be understood by reasonably well-informed persons in two or more different senses.” *Liverman v. State*, 470 S.W.3d

831, 836 (Tex. Crim. App. 2015) (citing *Yazdchi v. State*, 428 S.W.3d 831, 838 (Tex. Crim. App. 2014)).

When construing a statute, a reviewing court gives effect to statute’s plain meaning, unless that meaning would lead to absurd results that the Legislature could not have intended. *Id.* The plain meaning of a statute’s terms is determined by context and the rules of grammar and usage. *Id.*; see also Tex. Gov’t Code Ann. § 311.011(a) (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.”). In its initial evaluation, an appellate court considers these words and phrases according to their plain meaning and context, and—to the extent it remains reasonable—should give every word effect. *Liverman*, 470 S.W.3d at 836 (citing *Yazdchi*, 428 S.W.3d at 837). The words at issue here are: “serious,” “mental,” “impairment,” “deficiency,” and “injury.”

In its analysis, the Third Court of Appeals relied heavily on the Tenth Court of Appeals decision in *Ex Parte Hammons. Edwards v. State*, No. 03-20-00138-CR, 2021 WL 2692350, at *2 (Tex. App.—Austin July 1, 2021, pet. granted)(mem. op., not designated for publication)(citing *Ex parte Hammons*, 628 S.W.3d 335 (Tex. App.—Waco 2021, pet. granted),

vacated and remanded on other grounds, Ex parte Hammons, 631 S.W.3d 715 (Tex. Crim. App. Oct. 6, 2021). Restating the Tenth Court of Appeals’ definitions with approval, the Third Court determined that:

“the term ‘[m]ental has an ordinary meaning’ and ‘is commonly understood to refer to the mind.’ Further, the [*Hammons*] court explained that ‘deficiency’ means ‘the quality or state of being defective or lacking some necessary quality or element.’ The court also stated that ‘injury’ has been defined as meaning ‘hurt, damage, or loss sustained.’ Regarding the word ‘impairment,’ the court explained that the word means diminishment or loss of function or ability.’ Finally, the court stated that the word ‘serious’ in this context ‘is commonly understood to require a heightened or excessive level of the deficiency, impairment, or injury.’”

Id. (internal citations omitted).

On discretionary review, Appellant does not appear to challenge the plain and ordinary meaning of serious mental impairment, deficiency, or injury as explained by the Third Court of Appeals; instead, Appellant challenges the Third Court of Appeals’ application of the facts to those definitions. See App. Br. at 4, 13–15. The State agrees that the Third Court of Appeals’ plain and ordinary meaning of serious mental impairment, deficiency, or injury is sufficient to resolve the sufficiency issue.

B. The evidence is sufficient to support the jury’s determination that the child’s ingestion of cocaine-laced breastmilk resulted in serious mental deficiency, impairment, or injury.

A sufficiency review considers all evidence in the light most favorable to the verdict. *McKay v. State*, 474 S.W.3d 266, 269 (Tex. Crim. App. 2015) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). A sufficiency challenge will be denied if any rational trier-of-fact could have found the essential elements of the offense beyond a reasonable doubt. *See id.* (quoting *Jackson*, 443 U.S. at 319). During its review, the Court gives deference to the factfinder’s responsibility to determine those facts underlying its verdict, along with the reasonable inferences thereof. *Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016) (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)). Any conflicting testimony or inference is presumed to be resolved by the trier-of-fact in favor of the verdict. *Id.* (citing *Thomas v. State*, 444 S.W.3d 4, 8 (Tex. Crim. App. 2014)). A reviewing court may not reevaluate evidence or substitute its own judgment for that of the factfinder. *Davis v. State*, 586 S.W.3d 586, 589 (Tex. App.—Houston [14th Dist.] 2019, pet. ref’d) (citing *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010)); *see also Brooks v. State*, 323 S.W.3d 893, 911 (Tex. Crim. App. 2010). The court’s

role is to determine whether the evidence presented, when viewed in the light most favorable to the verdict, “actually supports a conclusion that the defendant committed [the charged offense].” *Morgan v. State*, 501 S.W.3d 84, 89 (Tex. Crim. App. 2016) (quoting *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007)).

For a jury to find a defendant guilty of a criminal offense, the State must introduce evidence proving each element of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 313; *Rabb v. State*, 434 S.W.3d 613, 616 (Tex. Crim. App. 2014). One method by which a person may commit the offense of injury to a child is by “recklessly [...] cause[ing] to a child [...] serious mental deficiency, impairment, or injury.” Tex. Penal Code Ann. § 22.04.

In a sufficiency review, “direct evidence of the elements of the offense is not required.” *Hooper*, 214 S.W.3d at 14–15. Circumstantial evidence is as probative as “direct evidence, and juries are permitted to make reasonable inferences from the evidence presented at trial and in establishing the defendant’s guilt.” *Id.* “Circumstantial evidence alone can be sufficient to establish guilt.” *Id.* at 15. “[T]he lack of direct evidence is not dispositive of the issue of a defendant’s guilt.” *Guevara v.*

State, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). “Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Thomas*, 444 S.W.3d at 8; *Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013).

The jury may choose to believe some, all, or none of the testimony provided by any witnesses, and assign different weights to that testimony. *E.g.*, *Bleimeyer v. State*, 616 S.W.3d 234, 241 (Tex. App.—Houston [14th Dist.] 2021, no pet.) (citing *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020)). In effect, the jury may infer intent “from any facts which tend to prove its existence[,]” and disbelieve any evidence to the contrary. *See Nguyen v. State*, 506 S.W.3d 69, 75–76 (Tex. App.—Texarkana 2016, pet. ref’d) (quoting *Louis v. State*, 329 S.W.3d 260, 268 (Tex. App.—Texarkana 2010), *aff’d*, 393 S.W.3d 246 (Tex. Crim. App. 2012)).

Additionally, “a jury may use common sense and apply common knowledge, observation, and experience gained in the ordinary affairs of life when giving effect to the inferences that may be reasonably drawn from the evidence.” *Taylor v. State*, 71 S.W.3d 792, 795 (Tex. App.—

Texarkana 2002, pet. ref'd). “While expert medical testimony as to the extent and effects of the injuries [...] has been found sufficient, such testimony is not necessary where the injuries and their effects are obvious.” *Id.* (citing *Carter v. State*, 678 S.W.2d 155 (Tex. App.—Beaumont 1984, no pet.); *Hart v. State*, 581 S.W.2d 675 (Tex. Crim. App. [Panel Op.] 1979)).

Analogously, in civil mental anguish cases, appellate courts have come to a similar conclusion. In cases involving concurrent physical injury, “[s]ome types of disturbing or shocking injuries have been found sufficient to support an inference that the injury was accompanied by mental anguish.” *Martinez v. Kwas*, 606 S.W.3d 446, 467 (Tex. App.—Houston [1st Dist.] 2020, pet. denied) (quoting *Fifth Club, Inc. v. Ramirez*, 196 S.W.3d 788, 797 (Tex. 2006)) (where evidence existed that petitioner suffered anxiety, sleeplessness, and a change in self-perception after being partially crushed during a car accident.) Moreover, physical injury, is not necessary for a successful mental anguish claim. *MRB & Associates, Inc. v. Lile*, No. 02-11-00431-CV, 2012 WL 4661665, at *10 (Tex. App.—Fort Worth Oct. 4, 2012, pet. denied) (citing *Star Houston v. Shevack*, 886 S.W.2d 414, 418 (Tex. App.—Houston [1st Dist.] 1994), *writ*

denied, 907 S.W.2d 452 (Tex. 1995)). Similarly, physical manifestations of mental injury are not required, though they are evidence of mental anguish. *City of Tyler v. Likes*, 962 S.W.2d 489, 495 (Tex. 1997) (citing *Boyles v. Kerr*, 855 S.W.2d 593, 598 (Tex. 1993)). Because mental anguish and injury is viewed through the lens of “societal judgments, some no longer current, about the gravity of certain wrongs and their likely effects[,]” a determination of serious mental injury will always be difficult for a trier-of-fact. *See id.* at 496 (citing *Parkway Co. v. Woodruff*, 901 S.W.2d 434, 443 (Tex. 1995)). It will always be a fact-intensive analysis of the circumstances surrounding an alleged offense. It will always hinge on witness credibility. As the Texas Supreme Court noted, “[i]ndividuals experience mental anguish in myriad ways, so each case is unique.” *Anderson v. Durant*, 550 S.W.3d 605, 619 (Tex. 2018).

Common sense, common knowledge, observation, and personal experience provide jurors with additional evidence of the effects of chemical dependency or addiction withdrawal. Just as this Court held, in 1972, that the highly addictive nature of drugs—specifically heroin—is common knowledge, appellate courts have recognized, that addiction and withdrawal can result in severe physical or mental injury. *See Dyche v.*

State, 478 S.W.2d 944, 945–46 (Tex. Crim. App. 1972); accord *Hardcastle v. State*, Nos. 05-01-01009-CR, 05-01-01010-CR, 05-01-01011-CR, 05-01-01012-CR, 2002 WL 31165160, at *5 (Tex. App.—Dallas Oct. 1, 2002, pet. ref’d) (“[I]t is common knowledge that children do take drugs and can die of overdoses.”); *Tarr v. Lantana Sw. Homeowners’ Ass’n, Inc.*, No. 03-14-00714-CV, 2016 WL 7335861, at *4 (Tex. App.—Austin Dec. 16, 2016) (mem. op.) (recognizing that courts have determined that “drug addiction constitute[s] [a physical or mental] ‘impairment’[.]”), *judgment withdrawn, appeal dismissed*, No. 03-14-00714-CV, 2017 WL 1228870 (Tex. App.—Austin Mar. 30, 2017, no pet.)(mem. op.).

Here, the jury heard evidence that L.B. had high levels of cocaine in her one-year-old body, and that these levels of cocaine are common in chronic adult cocaine abusers. 4 Rep. R. at 22:22–22:25; 6 Rep. R. at St. Ex. 1. Jefferies testified that L.B. would suffer withdrawal effects and mental developmental delays, in addition psychological effects, an impaired central nervous system, and a “real possibility” of overdose and death. 4 Rep. R. at 21:10–21:14, 22:22–22:25, 23:21–24:4. They heard testimony that L.B. was fussier and clingier than an average infant, despite no mental deficiency having been diagnosed. 4 Rep. R. at 34:2–

34:25. They also heard evidence that a doctor had examined L.B. and described her as being small for her age. 4 Rep. R. at (34:2–34:17). Appellant characterizes this evidence as insufficient. App. Br. at 15–16. However, Appellant fails to consider that the effects of drug abuse, addiction, and withdrawal are common knowledge and would be known to a rational jury. *See, e.g.,* National Institute on Drug Abuse, <https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction#ref> (last visited Mar. 11, 2022) (a publicly-available government publication describing addiction as “a chronic, relapsing disorder characterized by compulsive drug seeking and use despite adverse consequences. It is considered a brain disorder, because it involves functional changes to brain circuits involved in reward, stress, and self-control. Those changes may last a long time after a person has stopped taking drugs.”)

The jury was also free to make reasonable inferences from testimony, common sense, common knowledge, observation, and personal experience. *See Taylor*, 71 S.W.3d at 795. A jury could consider L.B.’s inability to verbalize mental injury, distress, or pain, and how any attempt to convey her condition would be through crying, or fussing. *See*

4 Rep. R. at 34:2–34:25. Similarly, it could infer potential difficulty in diagnosing mental impairment from an infant’s inability to articulate its mental state and assign little—if any—weight to testimony that no impairment had been diagnosed. *See id.*

Viewing the evidence and reasonable inferences thereof in the light most favorable to the verdict, measured against a hypothetically correct jury charge, with due deference to the jury’s determination of weight, credibility, and conflicting evidence and reasonable inferences, the jury could find all essential elements of the charged offense beyond a reasonable doubt. Because the jury could find all essential elements of injury to a child, the evidence is sufficient to uphold the jury’s verdict, and affirm the judgment of the Third Court of Appeals.

CONCLUSION

The State presented sufficient evidence at Appellant’s trial to support the jury’s determination that Appellant committed injury to a child. The jury heard evidence that L.B. ingested such a large amount of cocaine that her hair follicle test results were consistent with a chronic, adult cocaine user. The jury heard evidence that as a result of her addition L.B. would experience withdrawal symptoms, mental

development delays, other psychological effects, an impaired central nervous system, and, potentially, overdose and death. Further, the jury could consider common knowledge of the effects of substance abuse and withdrawal, such as severe mental pain or distress. From this information, and the testimony that L.B. was overly clingy and fussy, a jury could infer that L.B. suffered addiction and withdrawal, as a result of her extreme cocaine ingestion. Although Appellant argues no evidence exists supporting her conviction, the jury—after considering all the evidence—resolved any conflicting evidence in favor of its verdict. When viewed in the light most favorable to the verdict, the evidence and inferences thereof support the jury’s finding of each essential element of the injury to a child charge beyond a reasonable doubt. Specifically, the evidence is sufficient for a jury to find that serious mental impairment, deficiency, or injury occurred. Because a jury could find all elements of the offense beyond a reasonable doubt, no error occurred.

Absent error, the State requests that this Honorable Court deny all relief to Appellant and affirm the judgment of the Third Court of Appeals.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the State of Texas prays that this Honorable Court overrule Appellant's issue, and that the judgment Third Court of Appeals be in all things affirmed.

Respectfully submitted,

FRED WEBER
Criminal District Attorney
Caldwell County Criminal District
Attorney's Office
1703 S. Colorado St., Box 5
Lockhart, Texas 78644
Telephone: (512) 398-1811
Facsimile: (512) 398-1814
State Bar No. 00795713
ATTORNEY FOR THE STATE

/s/ Chase G. Goetz

By: _____
Chase G. Goetz
Ass't Criminal District Attorney
State Bar No. 24106009

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Brief was served via email through eFileTexas.gov on Susan Schoon, the attorney for Appellant Danielle Edwards, on March 11, 2022, in accordance with the Tex. R App. Proc. 9.5(e).

Susan Schoon
Schoon Law Firm, P.C.
208 S. Castell, Ste. 201
New Braunfels, Texas 78130
susan@schoonlawfirm.com
SBN: 24046803

/s/ Chase G. Goetz

Chase G. Goetz

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Pursuant to the Texas Rule of Appellate Procedure 9.4, the undersigned attorney certifies that the State's Brief in the **DANIELLE EDWARDS, Appellant vs. THE STATE OF TEXAS, Appellee** complies with the type-volume limitations because it is computer generated and does not exceed 15,000 words. Using the word count feature of Microsoft Word, the undersigned certifies that this brief contains 3,278 words in the following sections: Statement of Facts, Summary of the Argument, Arguments and Authorities, Conclusion, and Prayer. This brief also complies with the type-face requirements in that it is prepared proportionately-spaced typeface using Microsoft Word in 14-point Century Schoolbook.

/s/ Chase G. Goetz

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Chase Goetz on behalf of Chase Goetz
Bar No. 24106009
chase.goetz@co.caldwell.tx.us
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Associated Case Party: Danielle Edwards

Name	BarNumber	Email	TimestampSubmitted	Status
Susan Lee Schoon	24046803	susan@schoonlawfirm.com	3/11/2022 3:22:56 PM	SENT

Associated Case Party: StateofTexas

Name	BarNumber	Email	TimestampSubmitted	Status
Stacey Soule		stacey.soule@spa.texas.gov	3/11/2022 3:22:56 PM	SENT
Chase Goetz		chase.goetz@co.caldwell.tx.us	3/11/2022 3:22:56 PM	SENT